IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
Civil Application No.4919 of 2005
in
First Appeal No.456 of 2005

K.J. Construction Company. .. Applicant

Vs.

M/s.Vijay Enterprises. .. Respondent

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Shri Uttam G.Tahiliani for the applicant.

Shri C.J. Sawant with Shri Sandesh Deshpande for the respondent.

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WITH

Civil Application No.1504 of 2006
in
First Appeal No.456 of 2005

M/s.Vijaya Enterprises. .. Applicant

Vs.

K.J. Construction Company. .. Respondent

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Shri C.J. Sawant with Shri Sandesh Deshpande for the applicant.

Shri Uttam G.Tahiliani for the respondent.

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CORAM : R.M.S.KHANDEPARKAR &
S.R.SATHE, JJ.

DATED : 17TH APRIL, 2006

P.C.

1. Heard. These are the applications, one is by the applicant and another is by the respondent, in relation to the amount deposited by the appellant in terms of the order dated 29th March, 2005 passed by this Court in Civil Application No.1023 of 2005, and withdrawal thereof.

2. While passing the said order dated 29th March, 2006, this Court, after taking into consideration the errors in the arithmetical calculations by the trial Court, had stayed the execution of the impugned decree dated 7th October, 2004 in Special Civil Suit No.529 of 1997 till the disposal of the appeal, subject to condition that the appellant shall deposit 50% of the decretal amount. Consequent to the said order, the appellant has deposited a sum of Rs.7,71,093/- on 7th April, 2005 and the same is lying in the Court. The appellant prays for investment of the said amount in any nationalised bank, whereas, the respondent craves leave to withdraw the said amount.

3. Irrespective of the various contentions sought to be raised by either of the parties to the

proceedings, the fact remains that the trial Court had decreed the suit and this Court, while admitting the appeal, granted stay to the decree taking into consideration the fact that there are errors in the arithmetical calculations in arriving at the figure of the amount stated to be due by the appellant to the respondent, and had allowed the appellant to deposit 50% of the decretal amount. It is the case of the respondent that the said amount was towards the labour charges paid by the respondent in its capacity as labour contractor for the said activities. On the other hand, it is sought to be contended on behalf of the appellant that there is counter claim by the appellant against the respondent. However, the fact remains that the counter claim has been rejected.

4. In the circumstances, no purpose would be served merely by investing the said amount, and no prejudice would be caused to the appellant if the appellant is duly protected by directing the respondent to furnish bank guarantee for the sufficient amount before the amount deposited by the appellant is withdrawn by the respondent.

5. In the result, therefore, the application filed by the applicant being Civil Application No.4919

of 2005 is hereby dismissed, and the application filed by the respondent being Civil Application No.1504 of 2006 is allowed. The respondent in the said Civil Application No.1504 of 2006 is allowed to withdraw the amount deposited by the appellant, subject to the respondent furnishing bank guarantee of any nationalised bank to the tune of Rs.10,00,000/- (Rupees ten lakh) and the same to be kept alive till the expiry of a period of two months after the disposal of the said First Appeal No.456 of 2005 and subject to any further order that may be passed in the said first appeal. The respondent shall furnish bank guarantee within a period of three months from today and on furnishing the bank guarantee, the amount shall be released in favour of the respondent. In case, the respondent fails to furnish bank guarantee within a period of three months, as aforesaid, the amount deposited by the appellant shall be invested in any nationalised bank and shall be kept so invested till further orders.

6. Both the civil applications accordingly stand disposed of with the above directions.

(R.M.S.KHANDEPARKAR, J)

(S.R.SATHE, J)